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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/762,926 | 06/11/2001 | Joelle Thonnard | BM45330 | 9849 |

25308 7590 11/28/2001

DECHERT

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EXAMINER

SHAHNAN-SHAH, KHATOL S

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 11/28/2001

7

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|-----------------------------|-----------------------------------|------------------|
| Offic Action Summary | Application No. | Applicant(s) |
| | 09/762,926 | THONNARD, JOELLE |
| | Examiner Khatol S Shahnan-Shah | Art Unit 1645 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 01 October 2001 .

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 29-68 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 29-68 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's preliminary amendments, received 10/01/2001, paper # 6 is acknowledged.

Claims 1-28 were canceled without prejudice. New claims 29-68 were added.

2. Currently claims 29-68 are pending and under consideration.

Restrictions

3. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 29-35,37,39-42 and 57 are, drawn to polypeptides, fusion protein and method of producing the polypeptides.

Group II, claim(s) 36,38 and 59 are, drawn only to an isolated polypeptide consisting of the amino acid sequence of SEQ ID NO 2.

Group III, claim(s) 43, 44,48, 49,50, 51 and 68 are, drawn to a polynucleotide encoding a polypeptide and a process for expressing the polynucleotide.

Group IV, claim(s) 46 is, drawn only to an isolated polynucleotide comprising of the sequence of SEQ ID NO 1.

Group V, claim(s) 45,47 and 52-56 are, drawn to polynucleotides, vectors and host cells.

Group VI, claim(s) 58 and 60 are, drawn to a vaccine.

Group VII, claim(s) 61-62 are, drawn to antibodies.

Group VIII, claim(s) 63 is, drawn to a method of inducing immune response by using a polypeptide.

Group IX, claim(s) 65 is, drawn to a method of inducing immune response by using a Polynucleotide.

Group X, claim(s) 64 is, drawn to a method of diagnosing infection.

Group XI, claim(s) 66-67 are, drawn to therapeutic compositions.

4. The inventions listed as Groups I-XI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Groups VIII, IX, X and XI are drawn to different methods. The inventions do not share the same technical features because they are drawn to different methods, which differ in method objectives, method steps, reagents and material used.

Groups I -VII are drawn to structurally and functionally different products. The inventions do not share the same technical features because they are drawn to different products made by different methods and they are physically and functionally different molecules.

The polypeptides and polynucleotides of groups I-V do not share the same structural and biochemical properties. Because they are drawn to a plurality of polypeptides or polynucleotides consisting of a special technical feature comprising separate sequences.

The separate polypeptides or polynucleotides do not share a specific technical feature because each has different structural or biochemical properties as evidenced by the separate SEQ ID Numbers 1, 2, 3, 4, 5, and 6. Therefore, the disclosed polypeptides are not so linked as to form a single invention.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Election

6. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Please choose either SEQ ID 4 or 6 from groups I and III.

Please choose either SEQ ID 3 or 5 from group V.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claim(s) 29-35,37,39-42 and 57 are, drawn to polypeptides comprising SEQ ID NOs 4 and 6.

Claim(s) 43, 44, 48, 49, 50, 51 and 68 are, drawn to a polynucleotide encoding a polypeptide comprising SEQ ID NOs 4 and 6.

Claim(s) 45, 47 and 52- 56 are, drawn to polynucleotides comprising SEQ ID NOs 3 and 5.

The following claim(s) are generic: 29, 36, 42, 45, 46, 47 and 52

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Because they are drawn to a plurality of polypeptides or polynucleotides consisting of a special technical feature comprising separate sequences.

The separate polypeptides or polynucleotides do not share a specific technical feature because each has different structural or biochemical properties as evidenced by the separate SEQ ID Numbers 1, 2, 3, 4, 5, and 6. Therefore, the disclosed polypeptides are not so linked as to form a single invention.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol Shahnan-Shah whose telephone number is (703) 308-8896. The examiner can normally be reached from 7:30 AM - 4 PM on Monday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith, can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned to is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

jcuhm 11/26/01

Khatol Shahnan-Shah, BS, Pharm, MS

Biotechnology Patent Examiner


LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
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